

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICARDO GAXIOLA-SANCHEZ,

Defendant.

Case No.: 2:09-cr-00152-RLH-LRL

**ORDER**

(Motion to Correct Judgment –#47)

Before the Court is Defendant Ricardo Gaxiola-Sanchez's **Motion to Correct Judgment** (#47, filed Feb. 22, 2012). The Court has also considered Plaintiff the United States of America's Opposition (#48, filed Mar. 12). Plaintiff did not file a Reply.

**BACKGROUND**

On December 11, 2009, Defendant was sentenced to 46-months incarceration in a Deported Alien Found Unlawfully in the United States case. (Dkt. #28,29). In June 2010, the Ninth Circuit Court of Appeals granted the United States' motion for summary affirmance of this Court's judgment. (Dkt. #41). In March 2011, Defendant filed a § 2255 motion to vacate his 46-month sentence. (Dkt. #45). The Court denied this motion. (#46). Defendant has now filed a

1 motion to correct his judgment based on a new Department of Justice Fast-Track Program. For the  
2 reasons discussed below, the Court denies Defendant's motion.

### 3 DISCUSSION

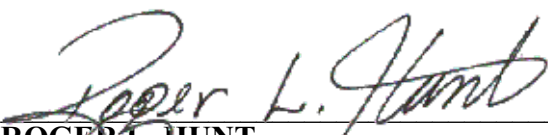
4 In general, a trial court does not have the authority to alter a sentence once it has  
5 been imposed. However, under 18 U.S.C § 3582(c)(2) a trial court may alter a sentence the  
6 defendant meets two criteria: (1) he must have been sentenced to a term of imprisonment based on  
7 a sentencing range that was later lowered by the Commission; and (2) the reduction must be  
8 consistent with the Commission's applicable policy statements." *United States v. Morales*, 590  
9 F.3d 1049, 1051 (9th Cir. 2010), *cert denied*, 131 S. Ct. 207 (2010). The district court lacks  
10 jurisdiction if the defendant does not satisfy both requirements. *Id.*

11 Defendant's motion is denied because he fails to meet both of the above  
12 requirements. First, his request is based off of a policy of the Department of Justice, which policy  
13 did not alter or amend in anyway the sentencing range on which his sentence was based. Second,  
14 the policy at issue is a policy of the Department of Justice not the United States Sentencing  
15 Commission. Accordingly, the Court lacks jurisdiction to alter Defendant's sentence. Finally,  
16 Defendant's motion is in reality a second or successive § 2255 motion, which is not proper unless  
17 approved by the court of appeals. 28 U.S.C. § 2255(h). Therefore, the Court denies Defendant's  
18 motion.

### 19 CONCLUSION

20 Accordingly, and for good cause appearing,  
21 IT IS HEREBY ORDERED that Defendant's Motion to Correct Judgment (#47) is  
22 DENIED.

23 Dated: April 30, 2012

24  
25   
26 **ROGER L. HUNT**  
United States District Judge